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OFFICE OF PETITIONS

In re Application of
Hamilton, et al.
Application No. 10/811,427 : DECISION ON PETITION
Filed: March 26, 2004 :
Atty. Dkt. No.: 18602- :
08744 (P3257US1) :

This is a decision on the petition under 37 CFR 1.181, filed September 13, 2007, to withdraw the holding of abandonment.

The petition is GRANTED.

The application was held abandoned May 3, 2007 for failure to timely submit a properly reply to the non-final Office action mailed February 2, 2007. The Office communication set a three month shortened statutory period of time for reply. Notice of Abandonment was mailed August 14, 2007.

Petitioners argue that the Office communication was not received and further indicate that the Office communication was returned to the Office.

In the absence of any irregularity in the mailing of an Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See, MPEP 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may

have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

The arguments and supporting documentation presented have been carefully considered and support the conclusion that the non-final Office was not received.

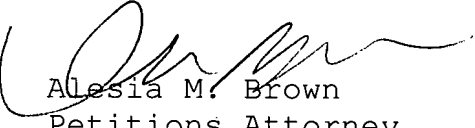
Moreover, a review of the official application file reveals that the Office communication was, for reasons unknown to the Office, returned to the Office by the United States Postal Service, despite the fact that the Office communication was properly addressed to applicant. There is no indication in the official record that the an attempt was made by the Office to re-mail the Office communication.

Accordingly, Notice of Abandonment is WITHDRAWN and the holding of abandonment is hereby VACATED.

There is no indication that the petition is signed by a registered patent attorney or patent agent of record who has been appointed to represent applicants. However, in accordance with 37 CFR 1.34, the signature of Mr. Brownstone appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts.

This application is being forwarded to Technology Center 2600 for re-mailing of the Office communication. The time period for reply will be set in the new Office communication.

Telephone inquiries concerning this matter may be directed to the undersigned at 571-272-3205.



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Office of Petitions